Zainap bte Abd Majid & Ors v Gan Eng Hwa & Ors

HIGH COURT (MUAR) — CIVIL SUIT NO 25-20-1988
RICHARD TALALLA J
27 SEPTEMBER 1994

***Tort** — Negligence — Road accident — Lorry parked along highway causing obstruction — Duty to take reasonable care — Motor car driven at excessive speed — Collision with oncoming bus when overtaking caused by trying to avoid obstruction of lorry — Apportionment of liability*

***Tort** — Nuisance — Obstruction to highway — Lorry parked along highway for loading — Road accident — Whether driver and owner of lorry contributorily negligent*

A motor car driven by one Encik Taib, in which the plaintiffs were passengers, collided with an oncoming express bus ('the Express') along the Muar-Batu Pahat road. Before the accident occurred, a Mercedes in front of Encik Taib's motor car overtook another express bus ('the Muar Express'). Instead of waiting for the Mercedes to complete the manoeuvre of overtaking and ascertaining whether or not it was safe to overtake, Encik Taib followed suit immediately behind the Mercedes. Unfortunately, a lorry was parked on the left side of the road facing in the opposite direction, obstructing the path of the Mercedes. The Mercedes was forced to come to a sudden halt, and, apparently to avoid colliding into the rear of the Mercedes, Encik Taib made the fatal decision to pull out to the right into the path of the oncoming Express. From the evidence, it was found that Encik Taib was travelling at an excessive speed. Encik Taib and three of the passengers in the motor car were killed. The plantiffs suffered injuries and claimed damages against the driver and owner of the lorry (the first and second defendants, respectively) in negligence and/or nuisance; and the driver and the owner of the Express (the third and fourth defendants, respectively) in negligence. The defendants, however, pleaded that it was Encik Taib who had been negligent in the circumstances.

Held, finding the third defendant completely not negligent and apportioning liability equally between the first and second defendants on the one part, and Encik Taib on the other part:

(1) Encik Taib was negligent in driving at an excessive speed and failing to ascertain that the situation was safe before he overtook the Muar Express.

(2) However, in cases where a vehicle is parked in such a way so as to cause obstruction and peril to the other road-users, that vehicle, by negligence and nuisance, is also to blame. It is trite law that an alternative claim in negligence and nuisance is permissible.

(3) The lorry was parked on the road needlessly and selfishly and in such a way as to cause obstruction and danger to other road-users. The first defendant should reasonably have foreseen that a collision such as that which actually happened, would occur and therefore, he had a duty to take reasonable care to avoid it. Any person with common sense would not have parked the lorry on the Muar-Batu Pahat main road, day or night, facing the wrong way, as it could set a trap for overtaking vehicles proceeding in the direction of Muar and could cause confusion.

[Bahasa Malaysia summary

Sebuah kereta yang dipandu oleh seorang yang bernama Encik Taib, di dalam mana plaintif-plaintif merupakan penumpang, telah berlanggar dengan sebuah bas ekspres ('Ekspres itu') di jalan Muar-Batu Pahat. Sebelum kemalangan tersebut berlaku, sebuah motokar Mercedes yang berada di hadapan motokar Encik Taib telah memotong sebuah bas ekspres Muar yang lain ('Ekspres Muar itu') dan, tanpa menunggu motokar Mercedes tersebut untuk menamatkan tindakan pemotongannya dan tanpa memastikan sama ada ianya selamat untuk memotong, Encik Taib turut mengikut dengan segera di belakang motokar Mercedes itu. Malangnya, terdapat sebuah lori yang diletakkan di sebelah kiri jalan raya dengan menghala ke arah bertentangan, yang menghalang jalan motokar Mercedes tersebut. Motokar Mercedes tersebut terpaksa berhenti dengan serta-merta, dan nampaknya, untuk mengelak daripada melanggar ke bahagian belakang motokar Mercedes, Encik Taib membuat keputusan yang membawa padah dengan menyimpang ke kanan lalu memasuki jalan Ekspres itu yang datang dari arah hadapan. Daripada keterangan, adalah didapati bahawa Encik Taib sedang memandu dengan kelajuan yang berlebihan pada ketika itu. Encik Taib dan tiga orang penumpang di dalam motokar itu terbunuh. Plaintif-plaintif mengalami kecederaan dan menuntut ganti rugi terhadap pemandu dan pemunya lori itu (defendan pertama dan kedua masing-masing) atas kecuaian dan/atau kacau-ganggu; dan terhadap pemandu dan pemunya Ekspres itu (defendan ketiga dan keempat masing-masing) atas kecuaian. Defendan pula menyatakan bahawa Encik Taiblah yang cuai dalam keadaan ini.

Diputuskan, memutuskan bahawa defendan ketiga tidak cuai sama sekali dan mengumpukan liabiliti secara rata di antara defendan pertama dan kedua sebagai suatu pihak, dan Encik Taib sebagai pihak yang satu lagi:

(1) Encik Taib adalah cuai kerana memandu pada kelajuan yang berkelebihan dan gagal memastikan bahawa keadaan adalah selamat sebelum dia memotong Ekspres Muar itu.

(2) Walau bagaimanapun, dalam kes di mana sebuah kenderaan diletakkan dalam cara yang boleh menyebabkan halangan dan

kebahayaan kepada pengguna jalan raya yang lain, kenderaan tersebut, juga harus dipersalahkan atas dasar kecuaian dan kacau-ganggu. Adalah menjadi undang-undang mantap bahawa suatu tuntutan alternatif berdasarkan kecuaian dan kacau-ganggu adalah dibenarkan.

(3) Lori itu tidak perlu diletakkan di atas jalan dan telah diletakkan di situ akibat suatu perbuatan mementingkan diri dan di dalam cara yang mengakibatkan halangan dan bahaya kepada pengguna jalan raya yang lain. Defendan pertama semunasabahnya dapat meramalkan bahawa suatu perlanggaran seperti yang telah berlaku akan berlaku dan, dengan itu, beliau mempunyai tanggungjawab untuk berjaga-jaga supaya mengelakkannya. Sesiapa yang mempunyai akal budi tidak akan meletakkan lori itu di atas jalan utama Muar-Batu Pahat, sama ada pada waktu siang atau malam, menghala ke arah yang salah, kerana ia mungkin menjadi suatu perangkap kepada kenderaan yang memotong kenderaan lain dalam perjalanan mereka ke arah Muar dan mungkin menyebabkan kekeliruan.]

[*Editorial Note*: The first and second defendants' appeal to the Supreme Court vide Civil Appeal No 02–477 of 1993 was heard on 28 February 1995. The court comprising Lamin, Chong Siew Fai and Wan Adnan SCJJ dismissed the appeal with costs.]

Notes

For cases on nuisance, see 12 *Mallal's Digest* (4th Ed) paras 589–612; [1991] Mallal's Digest 1967; [1993] Mallal's Digest 1293–1294.

For cases on road accidents due to negligence, see 12 *Mallal's Digest* (4th Ed) paras 392–573; [1989] Mallal's Digest 1501, 1506, 1510; [1990] Mallal's Digest 1183, 1192, 1194; [1991] Mallal's Digest 1964; [1992] Mallal's Digest 1656–1662; [1993] Mallal's Digest 1291–1292.

Cases referred to

Chan Loo Khee v Lai Siew San & Ors [1971] 1 MLJ 253 (refd)
Chop Seng Heng v Thevannasan & Ors [1975] 2 MLJ 3; [1975] 3 All ER 572 (folld)
Donoghue v Stevenson [1932] AC 562 (folld)
Harvey v Road Haulage Executive [1952] 1 KB 120 (refd)
Lim Kar Bee v Abdul Latif bin Ismail [1978] 1 MLJ 109 (folld)
Lloyds Bank Ltd v Budd & Ors [1982] RTR 80 (folld)
Rouse v Squires [1973] 2 All ER 903; [1973] 2 WLR 925 (refd)

E Ramasamy (*E Ramasamy & Co*) for the plaintiff.
KS Dass (*Chandra Mohan* with him) (*KS Dass & Partners*) for the first and second defendants.
RA Kumar (*Rina Noor & Co*) for the third and fourth defendants.

Richard Talalla J: On 7 July 1985 at 3.30pm, one Encik Taib was driving a motor car ('the motor car') along the Muar-Batu Pahat road in the direction of Muar and came into collision ('the collision') with a motor bus ('the Express') driven and owned by the third and fourth defendants, respectively, which was proceeding towards Batu Pahat. As a result of the collision, Encik Taib and three of his passengers were killed while two other passengers in Encik Taib's motor car were injured resulting in the plaintiffs suffering consequential and continuing loss and damage. The first and second defendants were the driver and owner, respectively, of a lorry ('the lorry'). The foregoing facts, apart from being pleaded by the plaintiffs, were agreed, these facts having been distilled from a statement of agreed facts.

The plaintiffs claimed damages against all four defendants alleging, inter alia, that the collision was caused by the negligence of the lorry driver or the driver of the Express, or both of them.

The plaintiffs' pleaded case was, inter alia, that the lorry driver when loading oil palm fruit had negligently parked the lorry on the wrong side of the road, against the flow of traffic, without any traffic sign to warn other road-users of the situation and in so doing he wrongfully obstructed the road, caused the lorry to become a danger to such road-users and a nuisance on the road, all of which resulted in the motor car colliding with the Express. The plaintiff pleaded further or in the alternative that, the driver of the Express was negligent in failing to keep a proper look out and to take steps to avoid the collision and speeding. The lorry driver pleaded that the collision was caused by Encik Taib, claiming that he drove too fast, did not keep a proper look out, encroached into the path of and failed to take steps to avoid colliding with the Express. The lorry driver's pleading against the driver of the Express was similar to the plaintiff's claim against the same. The driver of the Express in turn pleaded negligence against Encik Taib and the lorry driver, respectively, as the lorry driver pleaded against Encik Taib and as the plaintiffs claimed against the lorry driver.

The police sketch plan and key and photographs were agreed without the maker or photographer being called, all the defendants agreeing with the contents of the sketch plan as representing the situation when the plan was made but the plaintiffs and driver and owner of the Express contending that the lorry was not as represented in the sketch plan at the time of collision, but was on the metal road at that time and placed in the position represented in the sketch plan after the collision.

It was agreed that a principal question on the issue of negligence was the position of the lorry at the time of collision. If at the time of collision the lorry was on the side table as indicated in the sketch plan, the plaintiffs and the driver and owner of the Express conceded that the driver and owner of the lorry were not liable at all. If on the other hand the lorry was on the road at the time of the collision, then it was the argument of the plaintiffs and the driver and owner of the Express that the lorry driver was wholly or contributorily liable for the accident whereas the driver and owner of the lorry contended that even if the lorry was on the road at the time of the accident, that position of the lorry did not contribute to the

A accident and therefore in any event they were not liable. The drivers of the Fiat, the Muar Express, the lorry and the Express all gave evidence as did a motor cyclist who was following the Express, these five persons being the only persons who testified at the trial of this action.

The undisputed and unchallenged evidence emanating from these B witnesses was that the collision occurred on a straight stretch of the main road which was dry and visibility was good, that proceeding in the same direction and in front of Encik Taib's motor car, which was a Fiat 131, was a Fiat 132 motor car ('the Fiat') which in turn was following a motor bus ('the Muar Express') which in turn was following a Mercedes motor car ('the Mercedes') and in front of the Mercedes was the lorry, that Encik C Taib first overtook the Fiat, then the Muar Express, then cut in front of the Muar Express behind the Mercedes and then pulled out to the right into the right of way of the oncoming Express and collided with the Express.

I shall deal with the said principal question and the evidence generally D by referring to the evidence of the witnesses seriatim.

PW1 was the driver of the Fiat. He testified to the lorry being parked on the road facing Batu Pahat and the lorry having taken up three-quarters of that part of the road between the edge of the road and the dividing white line. This witness had parked his car after the collision, and on alighting E discovered that the lorry had already been parked on the side table. Counsel for the lorry driver sought to establish that PW1, the driver of the Fiat, was a partisan witness being a friend of Encik Taib, and cross-examined him to that effect. PW1 answered candidly that he had known Encik Taib before the accident for a period of three years and that they F were good friends but not related. It was suggested to PW1 that PW1 and Encik Taib had been racing but the witness denied that. I rejected any suggestion of racing which I consider to have been an afterthought of the lorry driver for it was not even pleaded that PW1 and Encik Taib had been racing. With the exception of the testimony of the lorry driver, the evidence of PW1 fitted in and was corroborated by the testimony of the other G witnesses, by and large. The lorry driver testified that the Fiat and the motor car were running parallel. Of course they were at one stage. That was when Encik Taib overtook the Fiat. Nothing sinister is to be deduced from that fact. In any event, the part that PW1 played in the episode was of no relevance, PW1 had given way to Encik Taib who overtook the Fiat H and then went on to overtake the Muar Express. Accordingly, negotiation with and the participation of the Fiat was a fait accompli. PW1 testified that the speed of the motor car was more or less 50mph.

PW2 was the motor cyclist. He testified that the wheel of the lorry was on the road beside a heap of oil palm fruit, that not many minutes after I the accident occurred, the driver reversed the lorry to the shoulder of the road and that the Express and the motor car were situated after the accident to the left of the road. This witness did not see the accident because his view was obstructed by the Express. I had no reason to disbelieve this witness. I accepted him as a witness of truth.

The next witness was the lorry driver. He told a different story. He insisted that the lorry was parked on the side table and not on the road at all. I did not believe him. It was he who was a partisan witness. He had every reason to say that the lorry was not on the road when it was so. What was more, I believe he reversed the lorry onto the side table immediately after the collision. I find so, because he testified that the fruit branches were at the back of the lorry but that was not as depicted in the sketch plan. More of this later.

The fourth witness was the driver of the Express. The sequence of events leading up to the collision and that event itself unfolded before his very eyes. When he saw the motor car overtaking the Muar Express, he took his foot off the accelerator and was ready to apply the brake. The motor car overtook the Muar Express and cut in front of it. The Mercedes had come to a halt having been obstructed by the lorry. The motor car thereafter suddenly pulled out again and it is then that an emergency arose. As the witness himself testified, it all happened in the twinkling of an eye. He braked and swerved to the left but it was too late. Some 40 minutes after the accident, this witness made a police report saying very much the same as he said in evidence. I accepted him as a witness of truth and I found him not to be negligent at all. This witness said that three-quarters of the lorry was on the road and the remaining quarter on the grass and that when he alighted, the lorry was in the course of being reversed.

The last witness was the driver of the Muar Express. This witness too testified that the whole of the lorry was on the road. This witness also saw the collision and the events building up to it. He said that the lorry was 200yds or more from him, about four or five lamp posts away. He was not sure whether there were vehicles behind him. He saw from afar a bus proceeding in the direction of Batu Pahat. This was no doubt the Express. A car overtook his bus. When the car was alongside the bus, it sounded its horn. The car proceeded into the space in front of the bus. Because the bus and the car were moving, the car had reached close to the lorry. Suddenly the Mercedes came to an immediate stop. This witness felt that the motor car that had overtaken him in seeking to avoid colliding into the rear of the Mercedes straightaway proceeded to the right of the road but by that time the Express had reached and immediately the collision occurred. This witness said that upon his bus being overtaken, he slowed down the bus. I accepted him as a witness of truth. This witness testified that he knew the driver of the Express before the accident because they both worked under the same employer. I drew no adverse inference from this fact; neither did counsel for any of the parties.

As is usual in accident cases, it is the police sketch plan with its key and photographs that reveal the truth. That plan disclosed the brake marks of the motor car as having a length of 99ft. The photographs showed the damage to the Express and the motor car and especially the motor car to be extensive. Upon a combination of these two features in particular and in consideration of the evidence as a whole, I found that the motor car was being driven at an excessive speed in the circumstances. I also found that

A Encik Taib failed to ascertain that the situation was safe before he overtook the Muar Express. He should have waited for the Mercedes to complete the manoeuvre of overtaking, then ascertained whether or not it was safe for him to overtake, and having done so and been quite sure that it was safe to carry out the manoeuvre, then and then only, should he have proceeded
B to overtake. Instead, he carried on headlong behind the Mercedes hoping everything would be alright and that he could follow through to the correct side of the road in front of the Muar Express and still behind the Mercedes in time to let the oncoming Express pass through. Unfortunately, the Mercedes had to stop suddenly because the lorry was blocking its path. Obviously Encik Taib was proceeding fast and could not stop in time to
C avoid colliding into the rear of the Mercedes. It must all have happened in a matter of seconds and in that limited time he made the fatal decision to pull out into the face of the oncoming Express. In the circumstances, I found Encik Taib to be negligent.

As to the driver of the lorry, there were four witnesses who testified
D to the lorry being on the road and of these four witnesses, all but one said the whole of the lorry was parked on the road. I accepted that as a fact. That was the probability, seeing that the oil palm fruit were lying on the side table awaiting loading. I also believe that the driver of the lorry reversed it onto the side table after the collision. The evidence in this regard is corroborated by the sketch plan which showed the fruit in front
E of the lorry which is hardly the right location for loading onto the lorry, the best position for loading being along the flank.

I found that by parking the lorry on the road in the way he did, he so obstructed the road as to cause it to be a danger to other road-users. Not only did the lorry obstruct the right of way of users of this main road
F coming from the direction of Batu Pahat in the direction of Muar, but also the lorry was facing the wrong way which in an emergency such as Encik Taib faced, could have caused him to become confused and make the wrong decision which he in fact made. My finding was based on the judgment of Raja Azlan Shah FJ, as he then was, supported by Gill CJ in
G *Lim Kar Bee v Abdul Latif bin Ismail* [1978] 1 MLJ 109. On that authority, I found the lorry driver liable in nuisance to the plaintiffs. In that case the respondent had claimed damages for personal injuries as a result of an accident on a road. The respondent's case was that in trying to avoid a child crossing the road about 10 feet ahead of him he swerved his motor cycle to the left and in so doing crashed into a 32-inch steel pipe which had
H been left lying about 3-4 feet from the near side of the road for the past one or two years. The pipe had a sharp steel-rim edge exposed and that constituted, as the learned trial judge held, a potential danger to road-users. The claim was founded on negligence, or alternatively, nuisance. The trial judge held that on both issues the defendant was wholly to blame.
I The learned judges abovestated dismissed the appeal. Ong Hock Sim FJ dissented on the ground that the pipe was off the road, in a place not meant for use by vehicles; not so in this case where the lorry was smack on the main road between Batu Pahat and Muar, so that even the dissenting judgment in *Lim Kar Bee*'s case supports the plaintiffs' action in the tort of

nuisance against the lorry driver. On the evidence of this defendant himself, the lorry was there for about two hours before the collision took place. I also found the lorry driver to be negligent in doing what he did. It is trite law that an alternative claim in negligence and nuisance is permissible: see Raja Azlan Shah FJ [1978] 1 MLJ 109 at p 116. As to the finding of negligence, I followed the dissenting judgment of Ong CJ in *Chan Loo Khee v Lai Siew San & Ors* [1971] 1 MLJ 253, as applied by the Privy Council in *Chop Seng Heng v Thevannasan & Ors* [1975] 2 MLJ 3; [1975] 3 All ER 572 as indeed I followed the latter case. In *Chan*'s case, three motor cars were involved in an accident near Tanjong Malim where the road was straight and of good width. One of the cars was a Volkswagen driven by a schoolmaster who was returning home after a holiday in Kuala Lumpur. The second car was an Opel proceeding in the opposite direction towards Kuala Lumpur. The third car was a Fiat bound for Kuala Lumpur which the trial judge found to be stationary on the carriageway at the time of the accident. The learned trial judge found that the Fiat was so parked with its side lights on, but held that 'in this position and in the circumstances of this accident it could not and did not constitute such an obstruction to the Opel as to have contributed to the accident'.

He found the driver of the Opel wholly to blame for the accident and dismissed the claim for contribution by the driver of the Opel against the driver and owner, respectively, of the Fiat as third parties. On appeal, which was dismissed by Gill and Ali FJJ, Ong CJ in his dissenting judgment said at pp 254 and 255:

> If parking a car, however recklessly, so as to cause needless obstruction to other road-users, were to be held blameless, merely because other motorists could still have room to pass, *provided they kept a proper look-out*, then it would appear that the deliberate parking of a car anywhere, even in the middle of the highway, should be considered equally excusable, if not justifiable, regardless of the fact that, by reason of such obstruction, other motorists had come to grief by reason of their being not fully alert. In such cases there should, in my opinion, be proper apportionment of blame, depending on the circumstances. But, to exonerate the obstructionist completely — when it is undeniable that, but for the presence of the obstruction, there could not possibly have been an accident — is to ignore the principle of placing the blame fairly on those to be blamed for their acts or omissions. In this age of fast motor transport I think it is the duty of the courts to eschew excessive legalism and to require that every motorist should observe the golden rule of shewing due consideration for other road-users, or suffer the consequences of his failure to do so. [Emphasis provided.]

This general principle enunciated by Ong CJ was emphatically approved by Lord Edmund-Davies at p 198 of *Chop Seng Heng*'s case. In that case, the first defendant was driving a lorry along a winding road at 3am when visibility was somewhat reduced by mist. After rounding a blind left-hand bend, and some 30ft from its exit, he parked the lorry on its correct side with the lights on and the off side flasher working, and leaving ample room on the road for a vehicle to overtake safely. A vehicle, travelling in the same direction with the plaintiff as passenger, rounded the bend at 35mph and

crashed into the rear of the parked lorry, and he sustained injuries. He claimed damages for personal injuries caused by the negligence of the first defendant and the second defendants, who owned the stationary lorry, and the driver, the third defendant, and the owner, the fourth defendant, of the vehicle in which the plaintiff was a passenger. The trial judge found that 75% of the cause of the accident was that the lorry was parked too close to the bend and that the third and fourth defendants had contributed 25% to the accident by the speed at which the vehicle had been driven round the bend. On appeal by the first and second defendants and cross-appeal by the fourth defendant, the Federal Court accepted the primary findings of the trial judge but, by a majority, allowed the appeal and dismissed the cross-appeal, holding that the first defendant was not guilty of negligence merely because he parked too close to the exit of the bend and that the fourth defendant was solely liable for the accident. The Privy Council held that the first and second defendants were rightly blamed in part for the accident, and since the trial judge had not misdirected himself on matters of fact and no error of principle had been established, his apportionment of liability should be restored.

In this case, the record discloses counsel for the lorry driver in his final speech citing the two authorities last stated and agreeing that I should follow the principle abovestated as approved by the Privy Council, but arguing that the present case is distinguishable on the facts because here the accident happened in broad daylight.

If it was being suggested that in applying the said principle and making a finding of negligence or otherwise, claims should be compartmentalized between those happening at night and those happening in the daytime, the suggestion was declined. There can be no rule of thumb. Every case has to be decided on its own facts and according to the circumstances pertaining to it. Accordingly, I did so. I found that the lorry was parked on the road needlessly and selfishly and, as I have already said, in such a way as to cause obstruction to other road-users and danger to them. I should add that the lorry driver should reasonably have foreseen that a collision such as that which actually happened, would occur and therefore he had a duty to take reasonable care to avoid it: see the famous test of Lord Atkin in *Donoghue v Stevenson* [1932] AC 562 at p 580. To put it in common parlance, any person with common sense would not have parked the lorry on the Muar-Batu Pahat main road, day or night, facing the wrong way. It was a crassly stupid thing to do.

Lloyds Bank Ltd v Budd & Ors [1982] RTR 80 was a case arising from a 'pile-up' of vehicles one foggy morning in 1975 on the A1 in England. The night before, a Scammell lorry had broken down. The driver drove it into a lay-by and left it there overnight. The next morning, together with a fitter, an attempt was made to drive the lorry to a more convenient place for repairs, but unfortunately it broke down again in the near side lane of the carriageway. A Granada car rammed into the back of another heavy vehicle and then a lorry crashed on to the Granada, killing the driver and passenger in the car. The learned trial judge found the driver of the Scammell not to be liable. In other words, as Lord Denning MR

was later to say, he found that the nuisance or the negligence of the Scammell driver was too remote to be a cause of the eventual pile-up. On appeal, Lord Denning made reference to the principles laid down in *Harvey v Road Haulage Executive* [1952] 1 KB 120 and *Rouse v Squires* [1973] 2 All ER 903; [1973] 2 WLR 925 and said ([1982] RTR 80 at p 83):

> Applying the principles laid down in the two cases, there is no doubt whatsoever that the broken down lorry — which was obstructing the carriageway — put the oncoming vehicles into peril: and it was, at least, a contributory cause of the accident. It was not necessarily the sole cause: but it was one of the causes. The negligence of the oncoming lorry was another of the causes. Nevertheless, in a case of this kind the vehicle which is obstructing the carriageway — by negligence and nuisance — is also to blame. If it were not there, there might be no 'pile-up' at all: and there might be no serious accident.

Leaving a vehicle on the road in circumstances such as occurred in the cases abovestated was a veritable trap; so in this instance. In my opinion, the lorry driver by parking the lorry on the road and on the wrong side likewise set a trap for overtaking vehicles proceeding in the direction of Muar, as evidenced by the Mercedes having to brake heavily on suddenly coming upon the lorry, leaving the hapless Encik Taib with no chance of escape.

For the reasons abovestated, I held the lorry driver and owner on the one part and Encik Taib on the other part equally liable for the collision and gave judgment accordingly.

Order accordingly.

Reported by Isabel Liong